

IN THE COURT OF APPEALS OF GEORGIA

CHELSEA CAGLE,)	
Appellant,)	
)	
v.)	Case No. A24A1482
)	
MIKE CARRUTH, <i>et.al.</i> ,)	
)	
Appellees)	

Reply Brief of Appellant

Appellant states the following as his Reply Brief.

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Summary of Argument

Appellees Karen Harden and Mike Carruth (the “Board Members”) moved for a “directed verdict” at the close of Appellant Chelsea Cagle’s (“Cagle”) case at a bench trial. The trial court granted a “directed verdict.” Now, for the first time on appeal, the Board Members assert that their motion really was one for an involuntary dismissal and argue that the trial court should be affirmed on that basis. The Board Members did not argue their Motion as one for involuntary dismissal and the trial court did not analyze it as one. The Board Members should not be permitted to gain from their own error.

The trial court erroneously considered documents filed in support of summary judgment rather than just the evidence presented at trial in granting a directed verdict.

Argument

At the close of Cagle’s case, the Board Members moved for a “directed verdict,” arguing that Cagle failed to carry her burden of proof. The Board Members provided no further argument or elaboration. The trial court granted the motion for “directed verdict,” both orally and in its order. The trial court made no express findings of fact. It merely said that calling an employee a director does not

make the person a director. At no point did the trial court say it was treating the motion for a directed verdict as one for involuntary dismissal.

Now for the first time on appeal, the Board Members assert that their motion for a directed verdict should have been (and was) treated as a motion for involuntary dismissal. They gave no indication at trial that their motion should be treated that way, and more importantly, the trial court did not give any indication that it was doing so. An argument not made in the trial court may not be raised on appeal. *Best v. CB Decatur Court, LLC* 324 Ga.App. 403, 410 (2013).

While it is true that a motion for directed verdict in a bench trial should be considered as one for an involuntary dismissal, that is not what happened here. The problem was exacerbated by the fact that the Board Members made no arguments in support of their motion, saying only that Cagle failed to prove her case. They did not argue that Cagle's witnesses lacked credibility or otherwise attack the evidence Cagle presented¹. And Cagle presented uncontroverted evidence that the Board Members' sons were system administrative staff.

¹ The Board Members attempt to do so in their brief, for the first time on appeal, arguing that one of Cagle's witnesses, the chair of the Board of Education, contradicted herself. She didn't. She testified that the Board Members' sons are directors, and sometimes called coordinators, but in any event their positions are

Even if this Court treats the motion for directed verdict as one for an involuntary dismissal, the trial court erred in dismissing the case. The trial court did not find any of Cagle's evidence to be unpersuasive. But the trial court improperly considered evidence not presented at trial. If the trial court had considered only the evidence presented, the un rebutted evidence was that the Board Members' sons are directors, sometimes called coordinators, and that their positions are administrative. Based on that evidence, it was clearly erroneous to dismiss the case.

The trial court's oral pronouncement and order indicated that the trial court improperly considered evidence that was not presented at trial. Specifically, the trial court stated that it was considering materials presented in the Board Members' motion for summary judgment. R3, p. 26 ("[B]ased on the documents filed in the summary judgment, I'm going to grant the directed verdict.") This was plainly erroneous. *Fleeman v. Canal Ins. Co.*, 302 Ga.App. 231, 232 (2010) (Once bench trial is held, court may no longer consider motion for summary judgment).

administrative. R3, pp. 13-14. ("Yes, they are called coordinators *as well*") [emphasis supplied].

The trial court effectively allowed the Board Members to put up a case without having to put up a case. The trial court considered the affidavits filed in support of the Board Members' motion for summary judgment, without allowing Cagle to cross examine those witnesses. Not only did the Board Members not address this error in their Brief, but they doubled down on it. They quoted approvingly the trial court's use of summary judgment materials in its decision (Brief at p. 13) and they cited to their Answer to establish facts in their Brief (rather than citing to the transcript of the trial – which of course would not support their facts because they did not put up a case).

The uncontradicted evidence presented at trial was that the Board Members' sons hold "administrative" positions in the school system. That is, they are "system administrative staff." The trial court apparently gave weight to the fact that the sons have a supervisor who has greater job responsibilities. That fact means nothing. Except for the chief executive, everyone who works in an organization has a supervisor with presumably great job responsibilities. There is no reason to conclude that a person with a boss cannot be "system administrative staff."

CONCLUSION

The trial court did not make any findings of fact and did not find that the evidence presented that the Board Members' sons' positions are administrative was not credible or persuasive. The un rebutted evidence showed that the Board Members' sons are on the staff of the school system and their jobs are administrative. They are "system administrative staff." The decision o the trial court should be reversed, and the case remanded for further proceedings.

This submission does not exceed the word count limit imposed by Rule 24.

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CERTIFICATE OF SERVICE

I certify that on July 3, 2024, I served a copy of the foregoing via U.S. Mail

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